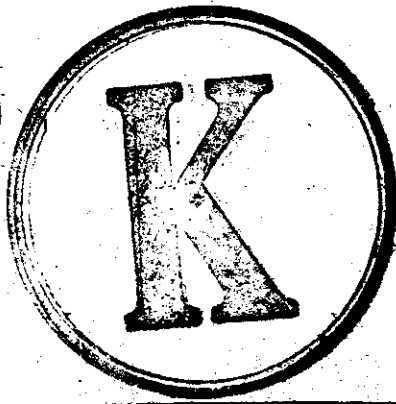


1951



File No. Dist. Police

II / 51 (R)

Legal Dept.

B. BRANCH

Subject:— Rules under the Bombay

District Police 1890.

File No. Dist. Police II / 51 (R)

Gen. 184 a

273-B.

Legal Department.

No previous approval of Government is necessary under section 45(2). Under that section the power of the District Magistrate to assess and levy fees is only subject to the orders of the Commissioner, now Government, in view of section 3 of the Bombay Commissioners (Abolition of Office) Act, 1950. There is no other provision of the Act under which it is necessary for the District Magistrate to obtain previous approval of Government before making orders in respect of expenses for the arrangement for sanitation.

Id/- MX ..

Additional Secretary to Government.

U.R. to H.D., No.2615,

dated the 10th February 1951.

JPE.17/7/56.
4 copies.

Legal Department.

As a result of the amendment of rules 2 and 4 of the model rules under section 39-A of the Bombay District Police Act, 1890, the District Magistrates of at least some districts have assumed that the power given to them to require a licence for keeping a place of public entertainment includes the power to require a licence-holder not to keep such place of public entertainment open between the hours specified by a District Magistrate even during day-time. The main object of the Bombay District Police Act is to preserve peace and order in districts. The rules made thereunder also should, therefore, be made and enforced mainly with a view to see that the public order and peace are maintained in districts. Some of the reasons given by the District Magistrate in this case and in two linked cases below for enforcing the closing of restaurants or eating houses between the specified hours during day time have nothing to do with the maintenance of public peace and order in the districts. Orders for closing the restaurants are made with a view to see that the essential supplies required by the public are not used in large quantities by the owners or managers of restaurants or eating houses. Article 19(1)(g) of the Constitution of India provides that : "All citizens shall have a right to practice any profession, or to carry on any occupation trade or business." Clause (6) of article 19, however, does not prevent the State Government from making any law imposing in the interest of the general public reasonable restrictions on the exercise of the rights conferred by sub-clause (g). It will be difficult to support the orders made by some District Magistrate

requiring....

requiring an owner or manager of a restaurant or eating house to close his shop during the day during the specified hours, especially when the objects for which such orders are made are foreign to the purposes of the Act.

Moreover, the closing and opening hours of restaurants and eating houses are prescribed by Chapter IV of the Bombay Shops and Establishment Act, 1948. Subject to the provisions of Chapter IV, owners of restaurants and eating houses are free to carry on their business subject further to this provision that such restaurants and eating houses have to obtain a licence from a District Magistrate under the Bombay District Police Act, 1890. The provisions of the Bombay District Police Act, 1890 and of the Bombay Shops and Establishments Act, 1948 must be so construed as to be not inconsistent with each other. In that view the two Acts can remain side by side if it is held that whereas the Bombay District Police Act provides for a licence for keeping a place of public entertainment, the Bombay Shops and Establishments Act, 1948, regulate the hours during which such place of public entertainment should remain open. The benefit which an owner of a place of public entertainment enjoys under the Bombay Shops and Establishment Act, 1948, cannot be nullified by a District Magistrate requiring an owner of a place of public entertainment to keep his restaurant or eating house closed during day time during such hours as may be specified by the District Magistrate. At the most the provisions of rule 4 of the Model Rules may be resorted to only in the area in which the Bombay Shops and Establishments Act, 1948 has not been brought into force and that too for requiring the closure of a restaurant or eating house before 5 A.M. in the morning

and.....

JPE.17/7/56.4c.

and after 9 P.M. at night.

The view taken by the Secretary, Home Department, in respect of the provisions contained in Rule 12 of the Model Rules is correct. Section 42 of the Bombay District Police Act, empowers a District Magistrate to make an order prohibiting the carrying of arms, cudgels or other weapons etc., in a town or village or the vicinity thereof, in the circumstances specified in that section. In view of this provision the provisions on the lines of Rule 12 of the Model Rules should not find a place in the rules to be made under section 39A of the Act.

Id/- J.R.D. 20/2

Secretary to Government.

U.R. to H.D. No.3211,

dated the 21st February 1951.

JPE.17/7/56.4c.

Office of the R.L.A.

The view taken by Home Department at 'A' on page 10 is correct.

2. Rule 4 of the Model rules made under section 39A of the Bombay District Police Act, 1890, provides that no person keeping a place of public entertainment shall keep it open except during such hours as may be specified in his licence. If a hotel-keeper applies for a licence under rule 2 and says that he wants to keep his hotel open between 5 A.M. and 10 P.M. and a licence is issued to him accordingly by a District Magistrate, such a licence would not be held to contravene the provisions of section 19 of the Bombay Shops and Establishments Act, 1948. Under that section only the opening and closing hours in respect of a restaurant or an eating house have been specified. It is, however, entirely left to the discretion of a person to decide for how many hours within that margin he should keep his establishment open, subject, however, to other provisions in Chapter IV of the Act. If a person wants to close his establishment earlier than 11 P.M., there is nothing in section 19 of the Act to prevent him from doing so.

Id/- J.R.D.
19/5

Remembrancer of Legal Affairs.

U.R. to H.D. No.8024,

dated the 21st May 1951.

JPE.17/7/56.4c.

OFFICE OF THE R.L.A.

The necessary draft amendments to the Model Rules under section 39-A of the Bombay District Police Act, 1890, are sent herewith.

2. It is true that in virtue of the provisions of section 8 of the General Clauses Act, 1897, reference to section 7 of the Cinematograph Act, 1918 in the Rules shall be construed as reference to section 6 of the said Act and therefore it is not necessary to substitute 'section 6' for 'section 7' but this rule of construction is not necessarily available when any rules are repealed and re-enacted. Sub-rule (1) of rule 23 of the repealed Bombay Cinematograph Rules 1938, corresponds to sub-rule (3) of the Cinematograph (Censorship) Rules 1951 and therefore the latter rule should be substituted for the former. Since Rule 37 of the Rules in question has to be amended, opportunity may be taken to substitute in that Rule 'section 6' for 'section 7' of the Cinematograph Act, 1918 although as stated above such amendment is not necessary.

Id/- J.R.D.
13/6

Remembrancer of Legal Affairs.

U.R. to H.D. No.9416,

dated the 14th June 1951.

JPE.17/7/56.4c.

sd:
15/6
22/6/51